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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of)

)
 Paging Network, Inc. and)
 Arch Communications Group, Inc.)
 for Transfers of Control of Their)
 Radio Licenses)

WT Docket No. 99-365
 File Nos. 0000056159 and
 0000053852

To: The Commission

REPLY TO JOINT OPPOSITION TO PETITION TO DENY

Mobile Phone of Texas, Inc. (Petitioner), by its attorneys and pursuant to Section 1.939(g) of the Commission's Rules, hereby replies to the Joint Opposition to Petition to Deny filed in the captioned proceeding.

I. The Filing of a Petition to Deny Does Not Shift the Applicants' Burden to Demonstrate That the Requested Rule Waiver is in the Public Interest.

Paging Network, Inc. and Arch Communications Group, Inc. (Applicants) assert that Petitioner failed, in its Petition to Deny, to demonstrate that the requested waiver of the Narrowband PCS Spectrum Cap contained in Section 24.101 (a) of the Commission's Rules is inconsistent with the public interest. (Opposition at 2). Specifically, the Applicants claim that the Petitioner was required to meet a two-prong test in order to establish a prima facie case that a grant of the Applicants' rule waiver request would not be in the public interest. (Opposition at 2).

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The Applicants' assertions in this regard are plainly incorrect. As the Applicants correctly point out in the introduction to their Opposition, Petitioner did not challenge the underlying merger, and thus the merits of the proposed merger, in and of themselves, are not in issue. Rather, the Petitioner challenged only the Applicants' request for rule waiver in that the Applicants had not met their threshold burden under Rule Section 1.925, to demonstrate that grant of the waiver is in the public interest. Therefore, the burden has not shifted to Petitioner to show that a waiver grant is prima facie inconsistent with the public interest.

The Applicants have requested a waiver of a fundamental rule, which if not granted, would make them ineligible to hold five licenses in the Narrowband Personal Communications Service that serve the same geographic area. In order to justify a waiver of the spectrum cap contained in Rule Section 24.101, the Applicants are required to demonstrate, in accordance with Rule Section 1.925(b)(3), that

- (i) the underlying purpose of the rule will not be served, or would be frustrated by its application in a particular case, and the grant of the waiver is otherwise in the public interest; or
- (ii) the unique facts and circumstances of a particular case render the application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. . .

As demonstrated in the Petition, the Applicants' showing fails to meet any of these criteria. Thus, Applicants seek to put the proverbial cart before the horse, i.e., they seek to shift the burden of proof to the Petitioner to demonstrate that a grant of the waiver request would be contrary to the public interest. To do so, especially where the

Applicants have not met their threshold burden as described above, would substantively obliterate the standard set forth in Rule Section 1.925(b)(3). The fallacy of the Applicants' argument is that it proceeds from the premise that their request established a prima facie justification for waiver of Rule Section 24.101. Given the faulty premise, the burden of proof did not shift to Petitioner.

II. Paging Does Not Compete With Broadband Services.

Contrary to the Applicants' claim (Opposition at 3), one-way and two-way paging services do not generally compete for subscribers with broadband CMRS providers. This is buttressed by Applicants' concurrence with Petitioner's argument that "most subscribers to wireless telecommunications services opt for broadband services in order to obtain two-way voice communications" in that "most customers would purchase their broadband services regardless of whether the service provider also bundled paging as an ancillary service." (Opposition at 4).¹ While making this concession, Applicants nevertheless argue that paging and broadband CMRS providers "do compete because whenever a customer purchases broadband services bundled with an ancillary paging component, the customer often is no longer in the market for paging service." (Opposition at 4-5). However, this overlooks what seems to be obvious: if paging service alone truly satisfies a prospective subscriber's communications requirements, she

¹ Additionally, the Applicants' claim that Petitioner will be a new entrant if it is successful in the upcoming 929/931 MHz paging auction (Auction Event No. 26), is simply untrue. The Commission can take official notice that Petitioner is an established paging carrier operating facilities in the 900 MHz paging band.

is not likely to want to pay the substantial additional costs of obtaining broadband CMRS; and likewise, if a subscriber wants and needs two-way voice communications service, he is not likely to consider paging service alone, regardless of whether paging is bundled with the two-way voice service. Moreover, there is no foundation for Applicants' reasoning that virtually any subscriber with a broadband CMRS device that can also function as a pager will not purchase or utilize a separate one-way or two-way pager.

In this regard, one of the undersigned counsel, for example, subscribes to broadband CMRS (PCS), which has paging and voice mail features (albeit unactivated), as well as an alpha-numeric pager which was obtained through his affiliation with a volunteer fire department in a Northern Virginia County (the County).² The PCS phone is generally used for outbound calls (including responses to pages), while the pager is used to receive inbound text and alpha-numeric messages, that may or may not require a response by telephone. Additionally, since the pager is provided through the fire department, the pager also provides additional information from the County's dispatch center with respect to emergency calls that the recipient may be responding to.³ In fact,

² The pager is also available with a voice mail option which will page the end user upon receipt of a voice mail message. Additionally, other voice mail systems can be set up to signal the pager upon receipt of a voice mail message.

³ Specialized information in these paging messages includes: street address of the incident, units dispatched, and additional information that may not be provided over the voice radio. Additionally, the pager can also be used to alert personnel or a group of personnel to particular events or needs, such as a special call out for a disaster or major

this arrangement provides distinct advantages to the end user since the end user can review a paging message while talking on her broadband CMRS phone. If the end user only had a digital CMRS phone (and no pager), he would have to interrupt his phone conversation in order to review the paging message sent to his digital broadband CMRS phone since the key pad and alpha-numeric display are not visible while talking on the phone.

Thus, contrary to Applicants' contention, broadband CMRS services do not replace the conventional one-way or two-way pager. Counsel is aware that many state and local government agencies, especially public safety entities, as well as commercial businesses either provide one-way pagers or permit their employees to obtain one-way pagers through a larger, reduced-fee municipal or bulk-rate contract. As a result, these end users are able to obtain a paging service that is tailored to their particular needs and at reduced cost.

incident. Additionally, in much the same way that the fire department utilizes the pagers, as described above, other public safety entities (e.g., police and EMS), as well as other businesses (electric utilities, real estate companies, hospitals, etc.) utilize conventional paging services in order to ensure that their personnel will receive specialized messages, even though these same personnel may privately carry their own two-way broadband digital devices which include ancillary voice mail and paging services. This is in addition to personal messages that can be left on the pager.

III. Petitioner is not a New Entrant into the 900 MHz Paging Services.

Applicants claim that Petitioner will be a new entrant if it is successful in the upcoming 929/931 MHz paging auction (Auction Event No. 26). This claim is simply unfounded. The Commission can take official notice that Petitioner is an established paging carrier presently licensed in the 900 MHz paging band. There is nothing in Petitioner's Form 175 application to justify Applicant's assumption that Petitioner is "seeking to obtain these frequencies apparently for the first time in many markets" (Opposition at footnote 13), as opposed to simply protecting and expanding its existing paging operations.

IV. The Commission Has Not Found the Narrowband Spectrum Cap to be Unnecessary.

Contrary to the Applicants' assertion, the Commission has maintained that the Narrowband spectrum cap in Rule Section 24.101 has not lost its necessity. In its Report and Order and Further Notice of Proposed Rulemaking, in Gen. Docket No. 90-314, 12 FCC Rcd 12972 (1997) (Further Notice), the Commission did not propose to amend Rule Section 24.101 to either alter or eliminate the Narrowband spectrum cap limitation. The fact that the Commission did not affirmatively propose a modification to or deletion of the spectrum cap is indicative of the Commission's intent – that the Narrowband PCS Spectrum Cap is necessary in order to preserve competition in the marketplace.⁴ As such,

⁴ An exception was made for rural areas, but only insofar as the broadband spectrum cap is concerned.

the Applicants are unable (and with good reason) to distinguish the waiver request in the captioned applications from the waiver request that was denied on the same operative facts, in connection with Arch Communications' acquisition of Mobilemedia, Inc. Mobilemedia (14 FCC Rcd 8017 (1999)).

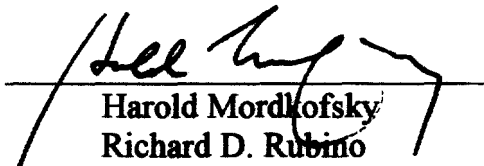
V. Conclusion

Accordingly, for the reasons set forth above and in the Petition, the request for waiver does not meet the requirements of Rule Section 1.925(b) and should therefore be denied in its entirety.

Respectfully submitted,

**MOBILE PHONE OF
TEXAS, INC.**

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CERTIFICATE OF SERVICE

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